

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

DARYL LAMAR BERRY,

Plaintiff,

v.

JAY V WHITE,

Defendant.

CASE NO. C15-1109 MJP

ORDER ON REPORT AND
RECOMMENDATION AND
MOTION FOR RECONSIDERATION

THIS MATTER comes before the Court on Plaintiff's Objections (Dkt. Nos. 7, 8) to Magistrate Judge Theiler's Report and Recommendation (Dkt. No. 6) recommending the denial of Plaintiff's application to proceed in forma pauperis and the dismissal without prejudice of the action pursuant to 28 U.S.C. § 1915A(b). (Id. at 2.)

The Report and Recommendation to dismiss without prejudice is based on 1) the fact that any § 1983 claims that necessarily imply the invalidity of Plaintiff's conviction or sentence have not yet accrued under Heck v. Humphrey, 512 U.S. 477 (1994), and 2) the fact that the sole defendant in Plaintiff's suit is King County Superior Court Judge Jay White, who is absolutely

1 immune from liability for damages under § 1983 for any actions undertaken by Judge White in
2 his role as a judicial officer for the King County Superior Court. (Dkt. No. 6 at 2.)

3 Plaintiff's objections do not address these deficiencies, but continue to press claims
4 related to the validity of Plaintiff's underlying sentence. (See Dkt. No. 7, 8.) Plaintiff has also
5 attempted to file an amended complaint, which among other issues continues to present Judge
6 White as the sole defendant. (Dkt. No. 9 at 1.)

7 The Court therefore ADOPTS the Report and Recommendation; Plaintiff's application to
8 proceed in forma pauperis (Dkt. 5) is DENIED; and Plaintiff's Complaint (Dkt. 1) and/or
9 Amended Complaint (Dkt. No. 9) and this action are DISMISSED, without prejudice, pursuant
10 to 28 U.S.C. § 1915A(b).

11 The Clerk is directed to send copies of this Order to plaintiff and to the Honorable Mary
12 Alice Theiler.

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14 Dated this 29th day of September, 2015.

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17 Marsha J. Pechman
18 Chief United States District Judge
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